

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on January 24, 2003 at 3:30 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note:

These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 181, 1/17/2003; SB 190,
1/15/2003
Executive Action: SB 181

HEARING ON SB181

Sponsor:

SEN. DON RYAN, SD, 22, Great Falls, Handed in a written statement requesting SB 181 be tabled. **EXHIBIT**(phs15a01)

EXECUTIVE ACTION ON SB 181

Motion/Vote: SEN. O'NEIL moved that SB 181 BE TABLED. Motion carried 9-0.

HEARING ON SB 190

Sponsor: SEN. JOHN BOHLINGER, SD 7, Billings

Proponents: Sue Fisk, MT Dental Hygienists Association, (MDHA)
Patti Conroy, MDHA
Chris Partridge, Great Falls
Debbie Porter, Billings
Jani McCall, Montana Children's Initiative, (MCI)
Connie Jacques, MDHA
Teri Nash, Missoula
John Flink, MHA
Cliff Christian, American Heart Association
James T Spencer III, MT Head Start
Robert McDonnell, Helena
Janet Lieberg, Helena
Gina Gabrian, Helena
REP. BILL THOMAS, HD 93, Hobson

Opponents: Mary McCue, MT Dental Association
REP. DON ROBERTS, HD 10, Billings
Doug Hadnot, MT Dental Association
Mike McCarthy, Board of Dentistry
Janet Thomas, Hobson
Marvin Bennett, Helena
Dan O'Neill, MT Academy of General Dentistry
Paul Sims, Butte

Opening Statement by Sponsor:

SEN. JOHN BOHLINGER, SD 7, Billings, brought SB 190, an act establishing criteria for when a licensed dental hygienist may

provide dental hygiene preventive services without prior authorization or the presence of a licensed dentist. He shared background information and facts in **EXHIBIT(phs15a02)**.

Proponents' Testimony:

Sue Fisk, MDHA, spoke and submitted her written testimony included in a booklet prepared by the Montana Dental Hygienists' Association **EXHIBIT(phs15a03)**. This booklet included information about hygienists and testimony of several dentists and hygienists in favor of SB 190.

Patti Conroy, MDHA, shared her written testimony, which is included in exhibit 3.

Chris Partridge, Self, said he was a Head Start parent from Glasgow. He said dental care was virtually unavailable there and has to drive two hours to the nearest dentist that accepts Medicaid. He favored SB 190 because it would be a first step for children in his area to receive basic oral care, and encouraged the committee members to support the bill.

Judy Harbrecht, MDHA, stated she has been a hygienist for 32 years. She was there to read for Kelly Evans, a CEO at Beartooth Hospital and Health Center. She could not be present and asked her testimony be read to the committee. **EXHIBIT(phs15a04)**

Debbie Porter, MDHA, stated she has practiced in Montana for 19 years. Her testimony is included in exhibit 3.

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Jani McCall, MCI, stated she represents Deaconess Billings Clinic, Montana Children's Initiative, and Montana Association of Independent Services for Disabilities in support of SB 190. She said the three groups thought this was an issue of access. It points to the interest of people who have special needs and do not have equal access to the kinds of services such as prevention and oral health care. The programs strongly support this bill and urged support.

Connie Jacques, MDHA, read written testimony for Pat Harper, the Associate Director for AARP **EXHIBIT(phs15a05)**.

Teri Nash, Missoula, stated he was on the board for Head Start. He said he was going to be in Helena to open a business in four months with assisted living. He works in assisted living and has also had seen first hand these children. In Missoula there are more than 340 children. He emphatically stated they were in

crisis in Missoula and thought the issue was about supervision. He pointed out from the hygienists testimonies they are willing to come and offer services for the children. Head Start has a partnership in Missoula with a few dentists that come in and offer their services. The waiting list was astronomical. **Mr. Nash** spoke from his own experience with his children. Teaching children how to brush their teeth was difficult. The low income families think that because children age's five and six years old are going to lose their baby teeth, not taking care of them consistently is okay. He said it was not okay, and used an example of an abscessed tooth, where the infection was so bad, a person could not eat. He said a person had to wait over a month, up to a year to see a dentist. With this bill, hygienists want to work with the dentists to figure out how to get into the public arena. The hygienists are willing to provide preventive care. Dentists are not going to be held back from any kind of income. He saw hygienists willing to come forward to help, who are not trying to get supplemental income, but alleviate a problem. He did not see dentists doing this. **Mr. Nash** repeated they are in crisis in Missoula and submitted SB 190 be passed.

John Flink, MHA, said his agency represented hospitals, nursing homes, home health agencies, and other health care providers. He thought if the hygienists' approach helps alleviate the problem, his agency would support SB 190.

Cliff Christian, American Heart Association, said heart disease was the number one killer. Early detection in problems of the heart is critical in the recovery of a heart disease patient. He said one way most people are screened and discovered with heart disease is through hygienists and dentists. Prevention is one key in having a healthy heart, and dental hygienists were a perfect place to start. **Mr. Christian** said his mother, who has since passed away, had late stage Alzheimers. She was in a nursing home a few miles outside Helena. It was discovered she had an abscessed tooth. Being in late stage Alzheimers, eating was an issue, and she was not eating at all. He called around and tried to get a dentist to come and fix the abscess. Before continuing, he made clear he did not have anything against dentists and understood they are busy. He said he could not get one for a month. The dentists were booked up. **Mr. Christian** and one nurse broke the abscess and let it drain the best it could. He felt horrible because they did not have any tools and had to pry his mother's mouth open. He had to listen to his mother scream in pain. He shared a second story regarding an employee, one of several who get minimum wage and no insurance, at a private business he owned. The young man was never taught how to take care of his teeth and they were in tough shape. The young man's teeth were not brushed regularly, they were stained, and

the public almost blanched when they saw him. **Mr. Christian** said he was a reliable and hard worker. He finally convinced the young man to go to a community health center. He was taken under the wing of a dental hygienist, who cleaned up his teeth and taught him how to take care of them. Today he will smile, but before he would not because he knew his teeth were bad. He learned with very little work, a couple times a day, he could have great teeth. His self esteem has improved. He acknowledged the controversy, but hoped there would be some resolution found.

James T Spencer III, MT Head Start, said he was the policy maker for Head Start and a parent, and hoped the committee would support this bill to give children an opportunity to have access to dental hygiene and care. He said he felt strongly about the bill because he grew up with a poor background. He said he was lucky enough to have a similar program such as the one being proposed. **Mr. Spencer** had someone in the system to help teach how to brush and floss teeth. He thought it important children learn at a young age, so when they become adults they do not go through the embarrassment, as the one mentioned in **Mr. Christian's** testimony. He was a member of the military, which gave him the opportunity to send his two daughters to the dentist, but many do not have the option. He thought it important SB 190 be supported.

Robert McDonnell, Helena, said he was there to represent his mother who is in a nursing home in Helena. In a two-year period, her teeth have become deplorable, under the supervision of the nursing home. **Mr. McDonnell** thought there has to be a better way to meet the needs of so many, like his mother, in nursing homes.

Janet Lieberg, Helena, submitted written testimony **EXHIBIT (phs15a06)**.

Gina Gabrian, Helena, stated she had been a practicing hygienist in the state for 15 years. She said after she graduated from hygiene school in Sheridan, Wyoming her first job was in Colorado, working with the migrant workers. Her job was to educate the young children on how to take care of their teeth. She hopes that her teaching children had an impact on them today. She felt public health is preventive, which is what is being sought in helping individuals in the long term care facilities, and allows access to all individuals.

Connie Jacques, MDHA, read and submitted her written testimony **EXHIBIT (phs15a07)**. She also handed in written testimony for **Carol Price, Clancy**, who could not be there **EXHIBIT (phs15a08)**.

REP. BILL THOMAS, HD 93, Hobson, said he and his wife both are now retired. He applauded the efforts of the hygienists for bringing it to the legislature's attention. He said the hygienists were already capable and legally able to do the services. **REP. THOMAS** said Montana legislators have an obligation to provide the best for Montana citizens, which included the safety of their health. **REP. THOMAS** said it would provide compromised care to some of Montana's compromised people, such as the elderly. Quality care is first and foremost and must be adhered to. He was concerned about the supervision of the hygienists who were not qualified. He believed the program would have strong possibilities with the amendments offered. Furthermore, with the cooperation of the dentists and the dental hygienists, it could be a beneficial situation for Head Start people and those in the nursing homes.

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Opponents' Testimony:

Mary McCue, MT Dental Association, said she had been the legal council and lobbyist for the dental association for more than 12 years and is the executive director for the MT Dental Association. Before giving testimony, **Ms. McCue** handed out a letter from a dental hygienist in Kalispell who is in opposition of SB 190 **EXHIBIT (phs15a09)**. Another handout was a fax from a dentist in Kalispell **EXHIBIT (phs15a10)**. The third handout was a list of concerns **Ms. McCue** prepared regarding hygienists practicing in a non-dental setting without supervision of a dentist **EXHIBIT (phs15a11)**. This was accompanied with defining statute 37-4-405, a dental hygienist to practice under supervision of licensed dentist **EXHIBIT (phs15a12)**. **Ms. McCue** said the MDA represented 90% of the dentists in Montana. She said she was representing them as reluctant opponents to SB 190. She specifically opposed the system of dental care that is being proposed because it does not include a dentist. It is a patient safety issue for the MDA. **Ms. McCue** passed out a fax she received from a dentist in Bozeman **EXHIBIT (phs15a13)**, informing the committee that the letter was taken up by the Board of Dentistry at their meeting in December 2002. Their conclusion was yes, the hygienist could go out into the nursing home and do those services. She said this was an extension of what most have understood general supervision to mean during the last three years. Another issue that came up before the Board of Dentistry in the last year was whether or not a hygienist could treat a new patient in the dental office, before the dentist had seen the patient. The Board of Dentistry, interpreted the statute, and said the hygienist could. The MDA, which did not agree with that

interpretation, does not always prevail at the Board of Dentistry. There were five dentists and five non-dentists on the board. In the last year, the board has interpreted this statute to expand the scope of dental hygienists in the state of Montana significantly. **Ms. McCue** referred to SB 190 and pointed out the language she saw as most problematic. The first, on the second page, line 5-7, the definition of public health supervision. Under that definition, there could be a circumstance of no involvement of a dentist. She said this was not good dental care. She informed the committee the Board of Nursing met the day before in Helena, reviewing bills moving through the legislature. They reviewed SB 190 and issued a statement in their minutes of finding that it was not within a nurse's scope of practice to supervise a hygienist. If a nurse supervises a hygienist in a public health facility, she would be violating her own scope of practice. She handed out an amendment proposed, speaking for the MDA **EXHIBIT (phs15a14)**. The MDA had sat with the hygienists several weeks ago and had not agreed on different parts of the bill. Some parts of definition agreement that could not be met on was the list of public health facilities and the list of services provided. One of the two hygienists on the board had some reservations about the placing of sealants and had voted along with the dentists, to oppose SB 190. **Ms. McCue** referred to exhibit 14 and said the MDA proposed the amendment to SB 190 as a new subsection three and delete all added. She suggested this because a myriad of issues needed to be discussed by the parties involved. She said the most appropriate place to do that would be in the rule making process. The Board of Dentistry can more effectively decide public health supervision, such as in a Head Start program, and how it might be different from the supervision in a nursing home. She urged the committee to amend the bill to allow the hygienists to go into those facilities providing services, but let the MDA go to the Board of Dentistry to work out the details of how this would work.

REP. DON ROBERTS, HD 10, Billings, said he was an oral surgeon. He was concerned about the hygienists taking x-rays and what they would be used for. He thought they should be reviewed by dentists for possible problems.

Doug Hadnot, MT Dental Association, stated he was a general dentist in Missoula. He practices in Seeley Lake as well and has been in business for 31 years. He agreed a tremendous access problem was in Montana. **Mr. Hadnot** said this would not create any more dental hygienists and dentists, which is what is needed to settle the access problem. He said **REP. THOMAS** will be coming to the legislature with a bill from the dental hygiene school. This would produce dental hygienists in Montana, rather than from outside Montana. Under current law, hygienists do not have to be

employed by a dentist to provide services. **Mr. Hadnot** said a Partnership Health Clinic was in Missoula and a part-time dentist is employed by the clinic, who is ready, willing, and able to supervise any dental hygienist who wants to come to the clinic. He said there were simply not enough willing hygienists volunteering at the clinic. The avenue is there now for them to do that, but it is not happening. He said he had volunteered for years to do Head Start screenings in his office and at Seeley Lake. **Mr. Hadnot** accentuated there are ready and willing dentists to supervise the hygienists in those settings. He was afraid the bill could be a detriment to the access. Right now he works with a couple dental assistants, and a dental hygienist. He looks at the patients and decides what they need. He thought his dental assistants could provide some instruction in dental hygiene, while the hygienist was cleaning teeth on another patient. As a dentist, he could provide the most efficient treatment available and this bill could seriously fragment that picture. He said a situation could arise where the dental hygienist would not know what to do, and instead of having a dentist ready to take care of that problem, much time would be spent by an individual, trying to see a dentist. The dentist will then recreate many the steps the hygienist may or may not have already done. **Mr. Hadnot** said the MDA did not receive a copy of SB 190 until late in December or early January, after it had already been drafted. The dental hygienists were asked if they had any concerns and they said they did not. The MDA found out because Mary McCue got a copy of the bill from one other lobbyist asking her what she thought about it. She had not seen it. The lobbyist gave her a copy. He closed by saying the MDA is ready, willing, and able to talk about issues and acknowledged access being a tremendous problem and the MDA wants to help solve it.

Mike McCarthy, Board of Dentistry, read and handed in his written testimony **EXHIBIT (phs15a15)**.

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Janet Thomas, Hobson, stated she was a retired dental hygienist. She thought the efforts of the dental hygienists was a good thing. She agreed a huge need was there for dental care in nursing care facilities, besides the needs of children. **Ms. Thomas** spoke of her personal experience of her mother being in a nursing home for more than nine years. She said she never saw a nurse or staff do anything in the mouth of patients residing there. **Ms. Thomas** adamantly stated she would not want the nursing staff or the medical people to supervise her actions as a dental hygienist. She did not think them capable of doing so.

Marvin Bennett, Helena, said he was currently with the Department of Corrections. He went to dental school with **Mike McCarthy**. He remembered all the classes he had to go through and experience. He said his original interest in SB 190 was when he came to understand that some provisions would allow for treatment of felons, non-convicted individuals being accused in dental retention facilities. For individuals who are accused but not convicted, there is no constitutional requirement for care. They only receive emergency treatment, not any routine care. For individuals assigned to the penal system, dental care is provided in-house at the Montana State Prison and the Montana Women's Prison. Dental care is not delivered to in-house facilities. In those instances it is contracted out and the patients are taken out. **Mr. Bennett** said he talked to a friend who is a nurse, and asked her opinion about the bill. She told him she would never consider supervising a hygienist because she would not risk losing her license. He was glad to see the Nursing Association take a rational approach to this and that they recognize it is not in the scope of their profession. He said dentistry did not work for medicine, it works independently. The issue may be a lack of resources and lack of volunteers. He said initiatives were needed to correct it, but the bill was not it. The problem is that most dental hygienists are fully employed. He did not think they should be taking on more employment. What is needed is more dentists and hygienists.

Dan O'Neill, MT Academy of General Dentistry, stated he was a general dentist and President of the Montana Academy of General Dentistry in Butte. He opposed a non-dental person supervising a dental hygienist. He said the bill was called earlier a classic turf battle. He did not come to the meeting thinking he was in battle with the hygiene association. **Mr. O'Neill** employs a hygienist and works in a federally qualified health care center in Butte as a volunteer dentist. A full time dentist was there once, but the burden falls on the dentists who volunteer. His hygienist would not volunteer at the health care center, but one or two come in. He said unfortunately not everyone would step forward, dentist or hygienist, to volunteer. He agreed there were not enough health care providers and it was the number one issue. The issue he has brought forward to the school system in Butte, are the pop dispensers in the schools, regarding dental prevention and maintenance. **Mr. O'Neill** was concerned about the referral system. If they are going to refer, then the hygienists would need to diagnose from the screening and assessment of planning. The hygienists say they are not going to diagnose, but they are going to refer, and **Mr. O'Neill** was confused about that. He said nine dentists screened the kids in the school system in Butte and have for the last 15 years. He took issue with page 2, lines 8-11, where it suggests sealants are a preventive

measure against decay. **Mr. O'Neill** said in everything he has read in the dental journals and manufacturer's reports or providers of sealants have stated sealants will prevent or stop decay. He said this was absurd and he would have flunked his exam if he had said it did. He reminded the committee there were many programs in Montana, apart from Medicaid, such as the CHIP program, Donated Dental Services Program, Quality Health Care Programs, and the military that offer services at a discounted rate. Some services were offered free in these programs.

Paul Sims, Butte, said he was an oral surgeon from Butte. He wanted to say he did not think this to be a turf battle between the dentists and hygienists; both want to help improve the services to get people treated. The Board of Dentistry created a subcommittee of hygienists to handle issues of hygiene quickly. He just learned in the last few weeks about SB 190, which the hygienists have been working on for several months. He was surprised the hygienists did not come before the board who has been open and liberal in interpreting the rules in the past. **Mr. Sims** thought supervision was necessary in the hygiene program. He said that providing service to those in the nursing homes in Montana was difficult. The nursing homes do not have the dental facility, equipment, lighting, or the proper chairs. **Mr. Sims** said it might be good to study what other states are doing concerning this issue.

{Tape: 2; Side: B}

Informational Testimony:

James Brown, Department of Labor & Industry, Division

Administrators of Business Standards Division, stated he and two others, Lisa Addington, Bureau Chief of the Health Care Licensing Bureau and Sharon McCulloch, Board Administrator of the Board of Dentistry, were there for information purposes only.

Steve Yeakel, MT Council for Maternal & Child Health, said he was glad the issue was raised by **SEN. BOHLINGER**. He said there needs to be a focus on the need for expanded practice. The MT Council for Maternal & Child Health agree that dental care is one of the top three critical issues in Montana. He urged the Senators to think outside the box, to use the opportunity to be able to walk away from this session knowing Montana people's health, especially in dental care, are better cared for.

Questions from Committee Members and Responses:

SEN. DAN HARRINGTON asked what **Ms. Conroy's** reaction was to the amendment proposed by the MDA. **Ms. Conroy** said there would be no change. It looked like existing law would stay as is and the

Board of Dentistry would promulgate rules. The problem the hygienists run into is they cannot find enough dentists willing to go out there and work with them, such as in a nursing home. She also addressed earlier testimony of a dentist saying all the hygienists were fully employed. She said that was not so. Some are retired who do not want to work in the private practice setting and some who only work 2-3 days a week.

SEN. HARRINGTON asked about the statement made earlier from **Ms. McCue** regarding the position the Board of Nursing took in their meeting the day before. **Ms. Conroy** said the hygienists had discussed this with **REP. THOMAS** and Dr. Roberts, and they thought if they put that in, it would make dentistry more medical to the proposal. They are not tied to that and were fine in taking that part out of the bill. They were trying to look at a way the hygienists could work in a school setting, if the money were available.

SEN. HARRINGTON asked **Ms. Conroy** to comment on the earlier statement regarding those who come forward and offer their services to places such as Head Start. **Ms. Conroy** said it was a supply and demand issue. When talking about some larger communities, obviously more professionals were available for some of these services. In Billings, there were many professionals, but they could not seem to get any dentists who are willing to come to the screenings at the Head Start there. There were four hygienists there looking for employment and willing to go work in those settings, but uncomfortable with how the law was currently written right now. They were not sure if they would be crossing the line of general supervision or not. Sometimes there were job openings and there was personnel, but they do not always mesh.

SEN. BOB DEPRATU said he had spent the last three and half years, almost daily, in a nursing home with his mother. He saw conditions of many patients and he believed there was definitely a need. He saw points on both sides. He asked if coming together would be worthwhile for the hygienists and MDA members if something were found that was acceptable for both sides. **SEN. DEPRATU** also wondered if the sponsor would come back to the committee with something that is workable. **Ms. Conroy** said they had been discussing this with dentists since 1999. At every dental summit, this issue came up. There were four years to come to agreement and it did not work. At that point, the dental hygienists decided to bring it to the legislature and force the issue a little bit. She thought there was great merit if they could sit, now that it was on the table. They would be more than willing to sit and work on it for the next week. If the group could not come up with a consensus by next week, putting on it on

the table and coming back in another session was not going to accomplish anything.

SEN. DEPRATU said it was not his intent for it to come back in another session. He thought a week to ten days was a reasonable amount of time, and hoped that would inspire both sides to come together and work something out.

SEN. DUANE GRIMES asked **Ms. McCue** what her intention was with her proposed amendment. He asked if she were intending to delete any of the current bill. She suggested instead of the proposed amendments in the bill, in place of it, put hers in as a new subsection three.

Closing by Sponsor:

SEN. BOHLINGER suggested with respect to the proposed amendment, he did not see it solving the problem. He saw the same issue being confronted that conflicts with the statute. **SEN. BOHLINGER** expressed concern regarding those who do not receive dental care, such as those in the nursing homes and children. A solution needs to be found. He was hopeful a subcommittee would form to find resolution.

Adjournment: 5:30 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs15aad)